Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

NO. 76-544

PATRICIA STRICKLER, ADMINISTRATRIX OF THE ESTATE OF FRANK R. STRICKLER, DECEASED, AND PATRICIA STRICKLER, AN INDIVIDUAL

Respondents,

V.

NEFF TRAILER SALES, INC., A VIRGINIA CORPORATION

Petitioner,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUT

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REFERENCE TO OPINION BELOW

There was no written opinion of the United States District Court for the Northern District of West Virginia as judgment was rendered by a civil jury trial on January 29, 1975. The opinion of the United States Court of Appeals for the Fourth Circuit, dated July 21, 1976, is not yet reported, however, it is printed in the Appendix, infra, pages 1 to 11.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on July 21, 1976. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

Whether the decision of the court of first instance in allowing the issue of punitive damages to go to the jury is in conflict with the applicable Virginia case law.

STATEMENT OF THE CASE

Patricia Strickler, et al, herein referred to as plaintiff, filed a bill of complaint against Neff Trailer Sales, Inc., herein referred to as defendant, in the Circuit Court of Grant County, West Virginia, on July 12, 1973, seeking three items of compensatory damages totalling $11,415.26 and punitive damages of $100,000.00 plus costs and interest from date of judgment.

Defendant petitioned the United States District Court for the Northern District of West Virginia for the removal of the case, pursuant to 28 U.S.C. § 1441 (a) and original jurisdiction of the United States District Court for the Northern District of West Virginia was invoked under 28 U.S.C. § 1332 (a). After pre-trial conferences and order, the case was tried before a jury on January 27 and 28, 1975. The court entered a Judgment

on Jury Verdict dated January 29, 1975, awarding plaintiff a total of $11,415.26 in compensatory damages and $15,000.00 in punitive damages.

Defendant filed post-trial motions which were denied by the trial court by order of March 13, 1975. An appeal was timely noted to the United States Court of Appeals for the Fourth Circuit by the defendant and the case was argued on December 4, 1975. Said Court of Appeals upheld the lower court verdict on July 21, 1976, and it is from that decision that the defendant petitions for a writ of Certiorari to this court.

Plaintiff and her husband, now deceased, purchased a mobile home from defendant on August 21, 1971. A cash down payment of $2,000.00 was made and the balance financed. All payments were properly made. On May 4, 1973, Frank Strickler, plaintiff's husband, died

unexpectedly of natural causes.

After the death of plaintiff's husband, she alleged that at the time of purchase they desired credit life insurance on Frank Strickler and that they were of the opinion that they had purchased it from the defendant.

Plaintiff further contended that defendant wilfully, falsely and fraudulently charged $214.00 for recording costs of a deed of trust and $381.00 for titling tax.

Defendant contended that all of these allegations were false; that it would have benefited from the sale of credit life insurance in that they would have received a premium for selling credit life insurance and further that the amount financed would have been paid in full thus releasing the defendant from any liability that they would have had on the note that was financed at the bank; that the titling tax was correct;

and that the $214.00 was fully explained as interim interest on the amount financed from the date of the note until the date of the first payment by plaintiff.

Virginia law was applied.

All of defendant's motions were timely made and, when denied, excepted to.

REASONS FOR GRANTING THE WRIT

It was determined in the court of first instance that Virginia law applied. No parties to this cause of action excepted to the ruling of this court.

Virginia case law begins with the proposition that punitive or exemplary damages are allowed only in action of tort, and are not recoverable in actions for breach of ordinary contracts. Norfolk & W. R. Company v. Wyson, 82 Va. 250, cited 88 S.E. 313 (1886)

The Virginia Supreme Court in numerous decisions has further stated, "Exemplary

damages are allowable only where there is misconduct or malice, or such recklessness or negligence as evinces a conscious disregard of the rights of others.. Wood v. American National Bank, 100 Va. 306, 40 S.E. 931, 934 (1902); Wright v. Everett, 197, Va. 608, 615, 90 S.E. 2d 855, 859 (1959).

This view of the Virginia Supreme Court was followed by the federal court in Kaufman v. Abramson, 363 F. 2d 865, 866 (1966)

It was further stated in Wright v. Everett, supra at 615, "But where the act or omission complained of is free from fraud, malice, oppression, or other special motives of aggravation, damages by way of punishment cannot be awarded, and compensatory damages only are permissible....."

From that the court has reasoned that exemplary or punitive damages will not be awarded on a showing of gross negligence alone. In addition it must be shown that "the defendant acted wantonly or oppressively, in a spirit of mischief or criminal

indifference to his obligation. Wright v. Everett, supra.

Therefore it follows that it would be necessary to establish a showing of ill will, malevolence, grudge, spite, wicked intentions, or a conscious disregard of the rights of another. The above could not be inferred from a showing of want of probable cause. Nor could an evil intent be presumed or inferred from a mere mistake. Gaut v. Pyles, 212 Va. 39, 181 S.E. 2d 645 (1971).

The terms "recklessness", "wantonness", and "wilfulness" imply a knowledge and present consciousness that injury must result from a wrongful act done or from a duty omitted. 22 Am. Jur. 2d, Damages, § 253.

It is the contention of the petitioner that the record does not support this conscious disregard of the rights of another. That no where within the evidence is there a showing of any reckless, wanton, wilful, malicious, or fraudulent acts on behalf of the defendant that should support the finding of punitive

damages.

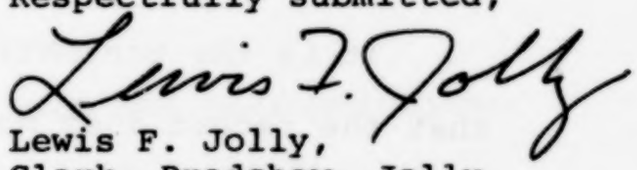
On the other hand what the record does reflect is the possibility of an honest mistake or simple negligence in the explanation and understanding of the total transaction by the parties concerned.

In closing it has been stated that the power of giving punitive damages should be exercised with great caution and that they be properly confined within the narrowest limits. 22 Am. Jur. 2d, Damages, § 238.

CONCLUSION

For the reasons set forth above, the writ of Certiorari should be granted.

Respectfully submitted,



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Attorney for Petitioner

October 15, 1976

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 75-1603

PATRICIA STRICKLER, Administratrix of the Estate of Frank R. Strickler, Deceased; and PATRICIA STRICKLER, an individual

Appellee

v.

NEFF TRAILER SALES, INC., a corporation, Ralph J. Bean, John M. Hamilton, Trustees

Appellant

Appeal from the United States District Court for the Northern District of West Virginia, at Elkins. Robert E. Maxwell, District Judge.

Argued: December 4, 1975
Decided: July 21, 1976

Before RUSSELL and WIDENER, Circuit Judges, and THOMSEN, District Judge.*

Lewis F. Jolly, (Clark, Bradshaw, Jolly, and Smith on brief) for Appellants; James Paul Geary, (Dennis V. DiBenedetto, Geary and Geary, on brief) for Appellees.

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* United States District Court for the District of Maryland. Sitting by designation.

PER CURIAM:

Neff Trailer Sales, Inc. (Neff), appeals from a jury verdict awarding Patricia Strickler, individually and as administratrix of the Estate of Frank R. Strickler (her husband), $11,415.16 in compensatory damages and $15,000.00 in punitive damages. Virginia law was applied in this diversity action. We affirm.

Mr. and Mrs. Strickler purchased a 1971 Parkway House Trailer from Neff in Harrisonburg, Virginia, on August 21, 1971. At that time, the Stricklers made a down payment and signed several documents, including the retail sales agreement, in blank. Mrs. Strickler urged at trial that

these documents were signed in blank in reliance upon the representations made by Neff's salesman that the documents would be filled out and completed according to the parties' agreement.

When Strickler died in 1973, Mrs. Strickler learned that, contrary to her alleged understanding at the time they bought the house trailer, they had not received credit life insurance on Mr. Strickler's life. The amount sued for in connection with this claim was $10,820.26, the balance owing at the time of Mr. Strickler's death.

Mrs. Strickler also claimed that they were charged $214.00 for the recording costs of a deed of trust, which costs in fact amounted to $1.25. In addition, Mrs. Strickler testified that she repeatedly and adamantly requested that her real estate not be encumbered, and that the salesman

assured her that the sales transaction could be completed without a deed of trust. Neff denied that it represented that a deed of trust would be unnecessary, and claimed that the amount of $214.00 was not for recording costs but for interim interest from the time of purchase until regular payments were to begin.

Additionally Mrs. Strickler sued for $381.00, which amount she understood would be credited to them for the house trailer's undercarriage. As the titling tax was in an equal amount, the credit for the undercarriage would offset the amount to be charged for titling tax, according to Mrs. Strickler's testimony. Neff claimed that $381.00 is the correct amount of tax to be charged, 3% tax to be paid to the State of West Virginia. Neff further claimed that there could be no offsetting credit for

the undercarriage because the undercarriage remained the property of the house trailer manufacturer and was returned to it. The $381.00 was not paid to the State until after this suit was commenced.

Although the evidence as to the underlying facts relating to each of these three compensatory claims was in conflict and disarray, the jury resolved the conflicts in the plaintiff's favor. The testimony and documentary evidence offered by the plaintiff, if believed, support the verdict.

The trial court also submitted to the jury the issue of punitive damages. This the defendant assigns as error. In Virginia, punitive damages are allowable only when there is proof of actual or express malice, which can be shown by, among other things, "a conscious disregard of the rights of another." Gaut v. Pyles, 212 Va. 39, 42, 181 SE

2d 645 (1971). We are of opinion that the evidence presented by the plaintiff was sufficient to support a finding of a conscious disregard by Neff of the rights of the Stricklers and supports the jury's award of punitive damages. As such, the question is one for the jury as trier of fact, not for the reviewing court.

Neff also assigns as error the trial court's instruction to the jury that it must find for the plaintiff on all three compensatory claims before it could award punitive damages. Neff argues that such condition may have caused the jury to find for the plaintiff on one or more of the compensatory claims in order to award punitive damages when it might not otherwise have so found.

The trial court instructed the jury as follows:

"In addition to actual damages, the

law permits the jury under certain circumstances to award the injured person punitive damages in order to punish the wrongdoer for some extra-ordinary misconduct and to serve as an example and warning to others not to engage in such conduct. If the jury should find, from a preponderance of the evidence in the case that the plaintiff is entitled to a verdict for compensatory damages on the three claims we have earlier discussed here, and should further find that the act or omission of the defendant which proximately caused actual injury or damage to the plaintiffs was fraudulently and willfully done, then the jury may, in the exercise of its discretion, if you unanimously choose to do so, add to the award of compensatory damages such

an amount as the jury should unanimously agree to be proper as punitive damages.

"Now, punitive damages must be reasonably proportionate to such sum of compensatory damages as are awarded.

"A statement or a claim or a document or an omission is fraudulent if it is falsely made or omitted or done or caused to be made with an intent to decieve. To act fraudulently means to act wilfully and with a specific intent to deceive or to cheat, ordinarily for the purpose of either causing a financial loss to another person or to bring about some financial gain to one's self.

"An act is done wilfully if it is done voluntarily and intentionally to do something that either

the law forbids or to act or to make an omission with a bad purpose.

"Now, a corporation can, of course, only act by or through its officers and agents. Now, whether or not to make any award of punitive damages in addition to compensatory damages, this is a matter exclusively within the province of the jury. If the jury should unanimously find from a preponderance of the evidence in this case that the defendant's acts or omissions (which) would proximately cause the actual damages to the plaintiff in these three claims was done with wilfulness and was done fraudulently, then the jury should always bear in mind that such extra-ordinary damages may be allowed only if you should unanimously

find an award for the plaintiff, a verdict of compensatory damages in the three areas that we have discussed.

"You should also bear in mind not only the conditions under which and the purposes for which the law permits an award of punitive damages to be made, but also, the requirement of the law that the amount of the extra-ordinary or punitive damages when awarded, must be fixed with calm discretion and sound judgment and as indicated, must be proportionate to the amount of compensatory damages awarded. And punitive damages must never be awarded or fixed in an amount, in any amount, because of sympathy or bias or prejudice with respect to any party in the case."

We are of opinion that this instruction requiring a finding for the plaintiff on all

three compensatory claims as a condition to awarding punitive damages, coupled as it was with the instruction on fraud, could not have harmed (and might have helped) Neff's position before the jury. We perceive no error.

The judgment of the district court is accordingly

AFFIRMED.

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NO. 76-544

PATRICIA STRICKLER, ADMINISTRATRIX OF THE ESTATE OF FRANK R. STRICKLER, DECEASED, AND PATRICIA STRICKLER, AN INDIVIDUAL

Respondints,

V.

NEFF TRAILER SALES, INC., A VIRGINIA CORPORATION

Petitioner,

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUT

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REASONS FOR REFUSING THE WRIT

As stated by the Petitioner, Virginia Law was applied and governed the question of punitive or exemplary damages. In Weatherford v. Birchett, 158 Va. 741, 164 S.E. 535 (1932), the Virginia Court defined exemplary damages as follows: "'Exemplary damages' are those given, not as pecuniary compensation for the loss actually sustained by the plaintiff, but as a warning to the defendant and to others, to prevent repetition, or commission, of similar wrongs.". This theory of punitive damages was also set forth in Zedd v. Jenkins, 194 Va. 704, 74 S.E.2d 791 (1953) and Blackwell v. Landreth, 90 Va. 748, 19 S.E. 791 (1894). A party is able to recover punitive damages where the act complained of is accompained by certain cir-

cumstances of aggravation. Most cases include as circumstances of aggravation the following: fraud, malice, oppression or such wilful conduct as shows an absolute disregard for the rights of others. Wood v. American National Bank, 100 Va. 306, 40 S.E. 931 (1902); Fishburne v. Engledove, 91 Va. 548, 22 S.E. 354 (1895). Petitioner contends that punitive damages cannot be awarded unless there is a showing of actual or express malice. Further that malice can only be established by a showing of ill will, grudge, etc.

However, this narrow view ignores the language in the cases setting forth the circumstances of aggravation that must be established in order to warrant the award of punitive damages. The Courts have always listed said circumstances of aggravation

in the alternative and not cumulative. In 22 Am.Jur. 2d, Damages, §249 the general rule regarding the circumstances when punitive damages are recoverable is set forth. After listing several circumstances of aggravation the section goes on to state that, "In the absence of one or more of such elements, the damages recovered must be confined to compensation for the injury complained of.". Said section further states that, "One or more of the conditions under which exemplary damages are recoverable is sufficient.".

Respondent in her pleadings and throughout the trial has always maintained that the actions of the Defendant constitute intentional, wilful and gross fraud and that such wanton action by the Petitioner does show an absolute disregard for

the rights of others. Therefore, the acts of the Petitioner were accompanied by sufficient circumstances of aggravation to warrant the award of punitive damages.

In addition to the above, the Virginia Court has maintained in several cases that where an act is done in an intentional, wilful, and wanton manner, manifesting an absolute disregard for the rights of others, to the injury of another, then actual malice need not be shown to entitle the aggrieved party to punitive damages. Such actions in and of themselves constitute malice and a showing that the acts were prompted by vindictiveness, ill will, grudge, anger or spite is note necessary. See Baker v. Marcus, 201 Va. 905, 114 S.E. 2d 617 (1960); Worrie v. Boze, 198 Va. 533, 95 S.E.2d 192 (1956); Friedman v.

Jordan, 166 Va. 65, 184 S.E. 186 (1936); Anchor Company, Inc. v. Adams, 139 Va. 388, 124 S.E. 438 (1924); Baker v. Carrington, 138 Va. 22, 120 S.E. 856 (1924); Bolton v. Vellines, 94 Va. 393, 26 S.E. 847 (1897); Norfolk & Western Railway Co. v. Anderson, 90 Va. 1, 17 S.E. 757 (1893).

In the evidence offered at trial, the Respondent presented many instances of conduct on the part of Petitioner, its employees and agents, as proof of the wilful conduct of the Petitioner manifesting an absolute disregard for the rights of the Respondent and her husband. In the cross examination of Petitioner's witnesses, concerning their actions and the documents executed during the transaction even more instances of wilful conduct on their parts was evinced. At the conclusion of all of

the evidence the Judge of the United States District Court for the Northern District of West Virginia closely scrutinized the evidence presented and the Virginia Law concerning the question of punitive damages and determined that sufficient evidence was presented to warrant submission of the question of punitive damages to the jury. Virginia Law is quite definite in its view that whether or not sufficient evidence has been presented to warrant sending the question of punitive damages to the jury is for the judge to decide. Turk v. Martin, 124 Va. 103, 97 S.E. 351 (1918).

The jury in exercising their obligations as triers of fact determined that the Petitioners actions were of such wanton and wilful nature and did manifest and absolute disregard for the rights of

of the Respndent and to her injury. They, therefor, found in favor of the Respondent and also awarded the punitive damages. The jury prior to their deliberations were fully and fairly instructed by the Court regarding the issues of the case and the punitive damages aspect. The punitive damages awarded by the jury was reasonably proportionate to the amount of compensatory damages.

The District Court had the opportunity to again review the law on punitive damages and the jury's award of same at the time Petitioner filed its post-trial motions. The Court upheld its finding and the jury's verdict.

Upon an appeal by the Petitioner, the United States Circuit Court of Appeals for the Fourth Circuit reviewed the law, and

the major portion of the trial record regarding the issue of punitive damages and whether or not it should have been presented to the jury. After careful review and argument of counsel the Court made the following determination:

> "We are of opinion that the evidence presented by the plaintiff was sufficient to support a finding of a conscious disregard by Neff of the rights of the Stricklers and supports the jury's award of punitive damages. As such, the question is one for the jury as trier of fact, not for the reviewing court." (This Honorable Court is referred to the copy of the Circuit Court's opinion as reprinted in the Petition for Writ of Certiorari, Appendix, p. 6)

Petitioner's contention that their actions were not fraudulent and wilful but resulted rather from mistake or error on its part was presented at the trial. However, the exhibits and evidence pre-

sented by Respondent convincingly contradicted this theory of defense. Based on the evidence the Court permitted the question of punitive damages to go to the jury. The jury in reviewing the evidence presented by both sides determined the issue in favor of Respondent.

CONCLUSION

Respondent would state that the law surrounding the question of punitive damages in the case in question was properly developed both in pre-trial proceedings and during the trial; that the United States District Court properly applied the Virginia Law in permitting the question of punitive damages to go to the jury; that the jury's award was properly made; that the actions of the District Court and the jury were reviewed by the

Circuit Court of Appeals and were upheld; and that no error was committed to the prejudice of Petitioner's rights. Therefore, Respondent would pray that the Petition for Writ of Certiorari be refused.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 33 of the Rules of the Supreme Court of the United States, I hereby certify that I have this 24TH day of NOVEMBER, 1976, filed the required copies of the Brief in Reply to Petition for Writ of Certiorari by mailing the required copies to Michael Rodak, Jr., Clerk of the Supreme Court of the United States at his address in Washington, D. C. 20543 and to Lewis F. Jolly, Esquire, 92 North Liberty Street, Harrisonburg, Virginia 22801, Counsel for Petitioner.

James Paul Geary

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Attorney for Appellee